

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Pipeline System LLC for authorization Pursuant to Public Utilities Code Section 851 to Lease Pipeline Facilities to Shell Oil Products U.S.

Application 02-11-055
(Filed November 27, 2002)

**DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE
SECTION 851 FOR A LEASE OF UTILITY PROPERTY****Summary**

Pacific Pipeline Systems LLC (PPS) requests authorization under Section 851 of the Public Utilities Code to lease to Shell Oil Products U.S. (Shell) a 1.3 mile segment of pipeline located at the southern terminus of its Pacific System (the Pipeline Segment) for the purpose of transporting non-utility grade gas from Shell's Los Angeles refinery to the Air Products and Chemicals, Inc. Wilmington plant. The Pipeline Segment has never been placed into service and PPS does not anticipate that it would be of any use in crude oil service during the term of the proposed lease. Shell intends to use the leased assets for its own use and will not offer the use of the leased assets for third party or public use. The application is unopposed.

We find that the lease is in the public interest since it results in the efficient utilization of utility infrastructure that has previously been unused. We further

find that there are no negative environmental impacts associated with the proposed lease. The application is granted.

Background

PPS is a Delaware limited liability company authorized to do business in the state of California with its principal place of business in Long Beach, California. PPS is wholly owned by Pacific Energy Group LLC, which in turn is owned by Pacific Energy Partners, L.P., a publicly traded limited partnership.

PPS is a public utility subject to the jurisdiction of the Commission under Public Utilities Code Section 216. PPS owns and operates two separate common carrier crude oil pipelines under tariffs on file with the Commission. These pipelines are known as the “Pacific System” and the “Line 63 System.” The Pacific System was approved by the Commission in Decision (D.)96-04-056 and began operation in February 1999. The Pacific System consists of a 130-mile, 20-inch, insulated pipeline that extends from Kern County to the Long Beach and El Segundo areas of Southern California. The permitted throughput capacity of the Pacific System is 130,000 barrels per day.

The Line 63 System extends from Kern County to the City of Carson and gathers crude oil from various locations in the San Joaquin Valley and transports it to refineries and terminals located in the Bakersfield area and south to refineries and terminals located in the Los Angeles basin. It also receives crude oil from the East Los Angeles and Wilmington fields. Only a segment of the Pacific System is at issue in this proceeding.

Description of Proposed Lease

PPS proposes to lease a 6,892 foot (1.3 mile) segment of the Pacific System to Shell for the purpose of transporting “refinery feedstock” also known as refinery gas, which is a non-utility grade gas byproduct of the crude oil refining

process, from Shell's Los Angeles refinery on Alameda Street to the Air Products and Chemicals, Inc. (Air Products) Wilmington plant located at 700 N. Henry Ford Avenue. The proposed lease is part of an arrangement between Shell and Air Products in which Shell has agreed to deliver refinery feedstock to Air Products and Air Products has agreed to supply Shell with hydrogen gas. PPS will continue to own and maintain the Pipeline Segment, but Shell will assume operational responsibility during the term of the lease. The lease will be of limited term, allowing Pacific to return the Pipeline Segment to crude oil service in the future. The lease allows PPS to substitute different pipe for the segment being leased to Shell at any time during the lease. Shell agrees that it will use the Pipeline Segment only for this limited purpose and not as a public utility.

The Pipeline Segment which PPS proposes to lease to Shell was built in 1998 and was originally intended to connect the Valero (previously Ultramar) refinery in Wilmington to the main pipeline of the Pacific System. The Pipeline Segment has never been placed into service or physically connected to the Valero refinery and PPS does not anticipate that it would be of any use in crude oil service during the term of the proposed lease.¹

PPS states that the proposed lease is in the public interest because it will allow Shell to transport refinery gas to Air Products where it can be used for commercially productive purposes. PPS states that the heat content, as well as other characteristics of refinery gas, do not meet the minimum quality

¹ Valero is a customer of PPS, but takes all of its deliveries from the Pacific System through an interconnection between PPS and the Edison Pipeline Terminal Company at Dominguez Hills.

specifications for transportation by local distribution companies therefore the lease will not impact the gas supplies made available by gas utilities.

Approval of the proposed lease will facilitate the exchange of hydrogen gas without building new pipeline facilities, by allowing Shell to use an existing segment of pipeline that has never been placed in service. The hydrogen gas will support Shell's manufacture of cleaner burning fuels. PPS states that it will not impact PPS's service to its customers.

Environmental Review

The California Environmental Quality Act (Public Resources Code Section 21000, et seq., otherwise referred to as CEQA) applies to discretionary projects to be carried out or approved by public agencies. Because the Commission must act on the Section 851 application and issue a discretionary decision, the Commission must act as either a Lead or Responsible Agency under CEQA consider the environmental impacts of a project that is subject to its discretionary approval. Under CEQA, the Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines Section 15051 (b)).

The Lead Agency for the 1996 Final Environmental Impact Statement/Supplemental Environmental Impact Report (FEIS/SEIR) for the Pacific System was the Commission; however, because the Pipeline Segment considered in the proposed lease is located entirely within the City of Los Angeles (the City), in this case, the City is the Lead Agency and the Commission is acting as a Responsible Agency in its review of the proposed project. As a Responsible Agency, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project (CEQA guidelines Section 15096).

On November 19, 2002, the City certified the 2002 Addendum to the FEIS/SEIR for the Pacific Pipeline project, adopted a “Statement of Findings” concluding that an addendum to the original FEIS/SEIR is the appropriate means to evaluate this project under CEQA, adopted a “Mitigation Reporting Plan,” incorporating additional mitigation measures to reflect the change in materials transported from crude oil to natural gas, and approved PPS’ application to lease the Pipeline Segment to Shell, contingent upon PPS incorporating all mitigation measures in the 2002 Addendum for the project and complying with the mitigation measures at all times.

We have reviewed the City’s environmental documents and find them to be adequate for our decision-making purposes. The City’s 2002 Addendum finds that the changes to the FEIS/SEIR are minimal, requiring minor technical changes to three System Safety mitigation measures in the 1996 FEIS/SEIR to account for the transportation of non-utility grade natural gas, rather than crude oil, in this limited segment of the Pacific System. The only construction required is minor valving and piping modifications at the Shell and Air Products facilities to connect the sending and receiving facilities at each site to the pipeline. The applicant, PPS, is responsible for successfully implementing all the changes to the original mitigation measures, as specified in the “Mitigation Reporting Plan.”

We find that the mitigation measures adopted 2002 Addendum to the FEIS/SEIR adopted by the City are reasonable to either avoid or substantially lessen potential environmental impacts to less than significant levels and we require implementation of the adopted mitigations as part of our approval.

Motion for Protective Order

Concurrent with its application, on November 27, 2002, PPS filed a Motion for a protective order requesting to keep under seal

pages 3 and 4 of the application, which set forth lease payments to be paid by Shell, as well as Exhibit 5, which contains information reflecting the commercial terms of the proposed lease. PPS states that disclosure of the sensitive and confidential information could place it at an unfair disadvantage and cause harm to its business operations.

Since PPS shows good cause, we will grant a protective order for a period of two years from the date of this decision, and during that period the information shall not be made accessible or disclosed to anyone other than Commission staff except upon further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge. If PPS believes that further protection of this information is needed after two years, they may file a motion stating the justification for further withholding of the material from public inspection, or for such relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

Discussion

As a lease of utility-owned real property, the proposed lease is subject to Public Utilities Code Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber any part of its property that is necessary or useful in the performance of its duties to the public. In order to grant such approval, the Commission must find that the proposed transaction serves the public interest. In this regard, the Commission has previously stated that the public interest is served when utility property is used

for other productive purposes without interfering with the utility's operation or affecting service to utility customers.²

We find that the proposed lease is in the public interest since it results in the efficient utilization of utility infrastructure that has previously been unused. Converting the Pipeline Segment to natural gas use will allow Shell to transport refinery gas without constructing additional facilities. Moreover, changes to the mitigation measures for the 1996 FEIS/SEIR discussed in the 2002 Addendum and reflected in the Mitigation Reporting Plan for the 2002 Addendum adequately mitigate the potential environmental impacts of the project such that there are no new significant environmental effects associated with the proposed lease. PPS does not operate under a traditional cost-of-service regulatory framework. Pursuant to authority granted in D.96-04-056, the rates for PPS's Pacific System are established pursuant to market conditions, therefore we see no ratepayer impacts.

Notice of the filing of this application appeared in the Daily Calendar on December 9, 2002. In Resolution ALJ 176-3103 dated December 17, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3103.

² D.02-01-058.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Julie Halligan is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PPS is a pipeline corporation subject to the jurisdiction of the Commission.
2. Notice of the filing of this application appeared in the Daily Calendar on December 9, 2002. No protests were received and a public hearing is not necessary.
3. The City has conducted an environmental review of the proposed project and is lead agency under CEQA for this project.
4. The Commission is a responsible agency under CEQA for this project.
5. The 2002 Addendum to the FEIS/SEIR adopted by the City adequately addressed the CEQA requirements for the proposed lease.
6. PPS has shown good cause to keep under seal Exhibit 5 and pages 3 and 4 of the application, which contain information reflecting the commercial terms of the lease.

Conclusions of Law

1. Approving the requested lease is in the public interest.
2. The 2002 Addendum to the FEIS/SEIR adopted by the City are adequate for the Commission's decision making purposes as a Responsible Agency under CEQA.

3. We find that the City adopted reasonable mitigation measures to either avoid or substantially lessen potential environmental impacts to less than significant levels and we adopt those mitigations for purposes of our approval.

4. It is reasonable to keep under seal Exhibit 5 and pages 3 and 4 of this application, which contain information reflecting the commercial terms of the lease.

5. A public hearing is not necessary.

6. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Pacific Pipeline System LLC's (PPS) Application for authority to lease a portion of its pipeline facilities to Shell Oil U.S. is granted.

2. PPS shall be responsible for successfully implementing the mitigation measures specified in the "Mitigation Reporting Plan for the 2002 Addendum to the Final Environmental Statement/Supplemental Environmental Impact Report for the Pacific Pipeline Project."

3. The information in Exhibit 5 and pages 3 and 4 of the application, which have been filed under seal as an attachment to the motion for protective order, shall remain under seal for a period of two years from the date of this decision and during that period shall not be made accessible or disclosed to anyone other than Commission staff except on further order or ruling of the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ) or the ALJ then designated as Law and Motion Judge.

4. If PPS believes that further protection of this information needed after two years, it may file a motion stating the justification for further withholding the

material from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this protective order.

5. Application 02-11-055 is closed.

This order is effective today.

Dated _____, at San Francisco, California.